

TO: Justin Porter, Ed.D., Executive Director of Special Populations

FROM: Laurie Kash, Ph.D., State Director of Special Education

RE: Response to Letter of Reprimand dated 11/3/2017

Date: November 21, 2017

Dr. Porter,

I have carefully reviewed the Letter of Reprimand you issued on November 3rd and taken time to deeply consider its content. I am aware that, regrettably, that letter will be included in my personnel file. I respectfully ask that this Response also be included. Frankly, I humbly hope you will consider withdrawing the letter.

Beyond this written response, I hope you and I can re-set our working relationship with improved mutual understanding of our perspectives on the important mission we are both devoted to for children with special needs and their families.

Basic Perspective on TEA's Benefit of Having Me in this Job:

I appreciate you noting that I was hired due to my knowledge of special education, my alignment of the student-first philosophy, and openness to new ideas. Ironically, I feel like my actions to date have been entirely consistent with those expectations: It is my knowledge of and devotion to special education that has caused me to question some old ways of doing things at our agency. Contrary to the impression of me in your letter, there are many people who appreciate my professional candor and openness to perspectives from parents and staff, that some of them felt was missing in the past. What you criticize as "inappropriate" or "unprofessional" and somehow disloyal, is to others a fresh openness, an application of my professional strength in this area, and appropriate humble "failure bows" to stakeholders (such as advocacy groups and ESC Special Education Directors) that, if allowed to continue, will result in greater respect for our agency, its leaders, our mission, and our success.

I must also say that, while my well-intentioned expressions of professional opinion and statements of fact to others has resulted in a reprimand, you and I (and many others) have witnessed far more disloyal and personally insulting comments routinely from Penny Schwinn about Commissioner Morath. My admitting to stakeholders that SPEDx got off to a rough start, pales in comparison. In fact, as just one example, I spoke to you about Penny's awful comments about Commissioner Morath in front of my husband and SPEDx contractor Christina Heitz—who, in fact, has been a personal friend of Penny's for over a decade—at the dinner SPEDx hosted that you and I attended September 19th at G'Raj Mahal. You acknowledged that Penny has repeatedly made derogatory comments about the Commissioner and just said you did not know why she does that. At least I can say, contrary to what Penny has said about the Commissioner, that my honest comments about agency business were based on my professional opinion with the direct, sole intent to improve our overall sense of unity and trust and rally everyone to support our agency mission. So, receiving the reprimand under these circumstances seems not only hypocritical, but very unfair.

The Awful Predicate of the SPEDx Contract

I have no doubt in my mind at all, that my questions and concerns about the SPEDx contract is why your Letter of Reprimand was issued in lieu of other alternatives for handling the situation. So, I want to be very clear about my opinion of the SPEDx situation and to clear up incorrect statements in the Letter. When I saw the agency personnel reaction to my legitimate concerns about the SPEDx contract, I felt nothing was going to be done to address the serious legal and policy issues that exist.

I first heard about the SPEDx contract from my predecessor, who expressed concern not only about it being a large sole-source contract but told me about Penny's personal friendship with Christina at SPEDx. As I observed what had happened, I too became concerned about the legality of the contract, the appearance of favoritism based on a long-standing friendship relationship, and the inferior performance of SPEDx. Using my professional knowledge of special education and being aware of similar past projects analyzing IEP data for program improvements, I looked at "sales" material SPEDx had provided in a webinar. I was alarmed at how bad it was. That material in the webinar did not indicate that there is anything confidential about it, particularly after being voluntarily disclosed in solicitation of no-bid contracts here and elsewhere. After I questioned their performance, SPEDx removed that material from our shared files, a move that is suspicious, at least. Their material continues to be of questionable quality and needs revision. My colleague Ann Jacobson has also commented to this effect on a regular basis and we have had to ask repeatedly, and most recently in the Friday meeting with Matt Moeller of SPEDx that we be given draft reports similar to those that would be given to districts because we need so much time to correct drafts that come from SPEDx.

I do not allege, and have not alleged, that SPEDx got that multi-million dollar sole-source contract because of the friendship between Christina and Penny. But the appearance of impropriety exists—not just as perceived by me, but others as well—because:

1. The SPEDx contract is worth about \$4 million considering the Original FY 2017 contract and the amended current-year contract, and may develop into a contract worth many times more than that.
2. SPEDx, a new corporation, had no track record to demonstrate that it qualified for such a contract.
3. Neither I, nor my counterpart in Louisiana, Jamie Wong, have seen anything about SPEDx or its analytical ability that demonstrates that it qualifies for a sole-source contract under Texas or federal law.
4. I believe the issuance of this contract violated federal and Texas law and our own agency's Contract Manual in several respects, and I've expressed this to you and others. Not only is SPEDx's services not so unique as to qualify for sole-source treatment, no one has shared with me, and I have been unable to locate, the proprietary justification memo that our Contract Manual (see pages 26-27) requires. In addition, I can confirm that the requirement that such a contract and no-bid justification memo be posted on the TEA website has not occurred, adding to suspicion, inside and outside the agency.
5. In September, not long after taking this position, I met with SPEDx representatives, including Christina Heitz and Matt Moeller, to counsel with them about the fact they had been paid about \$1.2 million but were falling way behind on expectations. As part of that conversation, I was frank with Christina, that SPEDx owed good performance so that it did not leave the impression with anyone that it could fail to perform because of her relationship with Penny. Obviously, when Christina communicated that to Penny, it made Penny angry. I think that my warning to this non-performing contractor was necessary and appropriate, and I hoped it would inspire SPEDx to improve its performance. While I feel ethically bound to complain

about what I sincerely believe is an illegal no-bid contract, I am also doing everything I can to make the SPEDx actually work for the benefit of our mission.

6. The SPEDx contract came as surprise to stakeholders, like parents and advocacy groups, who should have been consulted about this project before the contract was even offered. This lack of consultation and respect has generated deep concerns and will continue unless the kind of open, honest communication I have tried to model—and am now reprimanded for—occurs.
7. It does not help to ameliorate the appearance of impropriety or to improve the working relationship I want to have with Penny and others when Penny asked me to present false information on a presentation slide to the Commissioner that suggested that SPEDx was doing better than it is. Specifically, as you may know, at the time I made the presentation to the Commissioner—at Penny's direction, and in her absence—there were only 118 school districts participating in MOUs with SPEDx, but Penny gave me a slide to use that said "over 200" school districts were participating.

Restrictions on My Work

Your letter claimed there are "multiple examples of both internal and external stakeholders voicing concern over comments" I have supposedly made. The unsubstantiated way this issue is presented in the letter, with not a single specific example, is not fair to me and gives me no way to defend myself or even to clarify what I actually said. In addition, without specific examples, I do not know what statements I made that you consider to be inappropriately "critical of the agency's programs and initiatives" as opposed to discussions I have had that are frank, honest, and directed toward developing trust and involvement of internal and external stakeholders.

I ask you to withdraw your direction that I not "engage with external stakeholders, including but not limited to LEA and ESC staff, professional or parent organizations, and other states' officials, in person or on the telephone unless [you] are physically present." When the facts about what I have actually said, and my ongoing commitment to our mission is considered, this is an extreme and unnecessary restriction. In addition, it will at least impede if not halt, my ability to do my job. I understand and agree with your direction to be careful not to imply disloyalty to the Commissioner, the agency, or its mission in anything I do or say, but with that direction, I cannot even answer my phone or accept any meeting, without asking you, first, to be present. There is no factual reason to justify such harsh and unfair treatment of me. I hope you'll give me an opportunity to discuss this further.

Conclusion

I sincerely want us to resolve any issues that have arisen between you and me. I believe we would not be in this situation but for the SPEDx contract and the circumstances surrounding it. I will work very hard to overcome the circumstances and earn your respect for the value I have to this agency and its constituents.

Respectfully,



Laurie Kash Ph.D.
State Director of Special Education